IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 50 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SABBIRHUSSAIN MOHAMMED HANIF QURESHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 50 of 2004

MR MM TIRMIZI for Petitioner No. 1

MR. A.Y. KOGJE, Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/09/2004

ORAL JUDGEMENT

1. Heard Mr. Tirmizi learned counsel for the petitioner. Rule. Mr. A.Y. Kogje, learned APP waives

service of rule. With the consent of the parties this matter is taken up for hearing forthwith.

2. The petitioner by invoking writ jurisdiction of this Court under Article 226 / 227 of the Constitution of India has challenged the legality and validity of the order passed by Learned JMFC, Karjan, while disposing of the muddamal, by way of an interim arrangement, in exercise of powers vested in the Court under section 451 of Cr.P.C.

3. In the concerned crime the investigating agency had seized mutton worth of Rs.1,75,000-00 on the doubt that the mutton pieces were either of cow or of bullock. The say of the petitioner is that the mutton was not either of cow or of bullock but of another animal namely buffalo. Learned Magistrate has allowed application of the present petitioner. However, petitioner was directed to abide by certain conditions and the grievances is mainly against condition no.1 imposed by learned JMFC whereby learned Magistrate has directed the petitioner to deposit Rs.1,75,000-00 if the mutton is found to be either of cow or of bullock during the FSL analysis. It is submitted that learned JMFC ought to have said that at the outcome of the trial if it is found that the mutton was either of cow or of bullock then the petitioner shall deposit Rs.1,75,000-00 before the Court and should not have been on the basis of the FSL analysis.

4. Learned APP Mr. Kogje appearing for the State has submitted that relief No. 15 (A) as prayed for if granted, then, petitioner should be put under obligation to deposit Rs.1,75,000-00 and the disbursement of the amount should be made subject to the outcome of the trial. Without entering in to the phraseology used in para-15 (A) of the petition, the findings recorded by this Court while dealing with the Criminal Revision Application No. 19 of 2003 vide order dated 19-2-2003 (Coram: D.P. Buch, J) can be looked into because the facts of the case decided in this case is materially similar to the present petition. One of the arguments of Mr. Tirmizi is that the order under challenge could have been assailed by way of revision. But by that itself would not be considered as a bar in preferring Special Criminal Application because the revision is not a substantiative right under the statute and there is no appeal provided in Cr.P.C. in exercise of the powers vested in the trial court under section 451 of Cr.P.C. While dealing with the above Criminal Revision Application the Court had ultimately modified the condition in appropriate manner as the same was found

comparatively harsh and not absolutely in legal manner. For the sake of convenience para-3 of the order dated 19-2-2003 is quoted hereunder:-

"3. For the foregoing reasons, this revision application is allowed. The condition imposed by the trial court "that the petitioner would be required to deposit Rs. One lakh, if on the basis of the FSL report the muddamal is found to be cow mutton", is ordered to be modified so as to read as under:

" In case at the end of the trial, the trial court finds that the muddamal is cow mutton, then the petitioner shall deposit an amount of Rupees One lakh within seven days from the date of the order of the trial court. "

5. This Court feels that present petition can be disposed in the above directions quoted hereinabove.

The petitioner is now directed that in case the muddamal mutton is found on the report of the FSL report either of cow or of bullock then the petitioner shall deposit an amount of Rs.1,75,000-00 within 15 days from the date of the order of the trial court. The condition no.1 of the trial court is modified accordingly to the said extent. The petitioner shall file an undertaking to the said effect before this Court, since the petitioner has invoked the jurisdiction of this Court.

6. This Petition is allowed accordingly. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Dt: 6-9-2004 (C.K. BUCH, J)

/vgn